



**JOHN J. STIEFF
DIRECTOR, OFFICE OF CODE REVISION
LEGISLATIVE SERVICES AGENCY
200 W WASHINGTON, STE 301
INDIANAPOLIS IN 46204**

To: Members, Code Revision Commission
From: John J. Stieff
Re: Guidelines for Drafting Bills
December 1, 2010

As you know, the Code Revision Commission has been considering whether legislation should be drafted as a Code provision or a noncode provision when the legislation is not applicable to the state generally or is a temporary, transitional, or self-terminating provision.

In the Commission's deliberations on the issue, there has been a consensus on two points:

1. The law should be as accessible to the public and to practitioners as possible.
2. The law should be drafted in a way that is transparent.

To achieve consistency with these points, the vast majority of legislation should be placed in the Indiana Code.

If a provision is not applicable to the state generally or is a temporary, transitional, or self-terminating provision, the drafter should consider the following in deciding whether to place the provision in the Indiana Code or to draft the provision as a noncode statute.

PART 1.

THESE TYPES OF PROVISIONS SHOULD BE DRAFTED AS INDIANA CODE PROVISIONS:

1. An applicability provision. An applicability provision is used to specify the persons, things, or occurrences to which a statute applies or to limit the time frame to which the statute applies. An applicability provision should be placed in the Indiana Code, and it should be placed at the beginning of a title, article, chapter, section, etc. rather than the end.
2. A provision that does not contain an expiration date.
3. A provision that is in effect for more than two years. A provision that staggers the initial terms of members of a board or commission is an exception and may be drafted as a noncode provision. Provisions that make construction appropriations, concern bond authorization approvals, or are other budget act related SECTIONS are also exceptions.
4. A provision that phases in a legal requirement over time, even if the phase-in period is shorter than two years.

5. A provision that creates substantive rights and obligations.

6. A Medicaid waiver provision. When the Medicaid waiver program was established, all Medicaid waivers expired after a few years. At that time, drafting the provisions as noncode provisions was appropriate. Over the years, the waiver laws have changed, and many waivers are in existence for several years.

7. A provision that creates a study committee, task force, etc. if the law creating the study committee does not expire or expires later than the end of the year of enactment.

8. A provision that transfers rules from one agency or entity to another.

EXAMPLE:

Sec. 8. After December 31, 2011, rules of the creamery board are considered rules of the state department of health.

9. A provision that is a legalizing provision.

EXAMPLE:

Sec. 11. Actions taken under this chapter after December 31, 2007, and before the passage of legislation amending this chapter enacted during the 2011 session of the general assembly are legalized and validated to the extent that those actions would have been legal and valid if the legislation amending this chapter enacted during the 2011 session of the general assembly had been enacted before January 1, 2008.

10. A provision that is a savings clause.

EXAMPLE:

Sec. 17. The amendments to this chapter made by legislation enacted during the 2011 session of the general assembly do not affect:

- (1) rights or liabilities accrued;**
- (2) penalties incurred;**
- (3) crimes committed; or**
- (4) proceedings begun;**

before July 1, 2011. Those rights, liabilities, penalties, crimes, and proceedings continue and shall be imposed and enforced under the law in effect before July 1, 2011, as if the legislation amending this chapter enacted during the 2011 session of the general assembly had not been enacted.

PART 2.

THESE TYPES OF PROVISIONS SHOULD BE DRAFTED AS NONCODE PROVISIONS:

1. A provision that applies to only one person or entity and that does not have ongoing applicability. For example, if the legislation creates a new superior court, and the desire is to make a magistrate of the existing superior court the initial judge of the new superior court, the specification of the magistrate as the initial superior court judge can be done in a noncode statute with an expiration date. Other examples of this sort of provision are:

- (1) an extension of time to late-file for a tax exemption, deduction, etc., if the action is taken by the eligible taxpayers within a specified time;**
- (2) a tax levy appeal that applies to one unit; and**
- (3) one-time property transfers.**

2. A provision that is transitional or self-terminating. Examples of this type of provision include

provisions that establish initial terms or staggered terms for boards or committees, provisions that designate the initial judge of a new court, and provisions that transfer property and liabilities from one agency to another. The provision must contain an expiration date.

EXAMPLE:

SECTION 12. [EFFECTIVE JULY 1, 2011] (a) On July 1, 2011, the powers, duties, orders, liabilities, property, and records of the controlled substances advisory committee, before its abolishment, are transferred to the Indiana board of pharmacy (IC 25-26).

(b) This SECTION expires December 31, 2011.

Other types of provisions that are transitional or self-terminating include:

- (1) an appropriation that is not a continuing appropriation;
- (2) a provision transferring money from one account or a fund to another or otherwise specifying procedures for closing out an account; and
- (3) a provision requiring that refunds be given or maximum property tax levy limits be recalculated.

Draft as a noncode statute a provision that voids a rule on a specific date or that requires an agency to amend a rule by a specific date.

EXAMPLE

SECTION 1. [EFFECTIVE UPON PASSAGE] (a) Before February 1, 2011, the solid waste management board shall amend 329 IAC 10-2 to incorporate the following definitions of terms used in 329 IAC 10-2-99:

(1) Hazardous waste.

(2) Solid waste.

(b) This SECTION expires February 2, 2011.

3. A provision concerning the applicability of tax laws. Examples include provisions identifying the initial taxable event, taxable year, registration year, reporting period, filing date, deposit date, or assessment date to which a change in the law applies. Related transitional provisions, such as formulas for calculating tax rates for a particular taxable year may be included with a noncode applicability provision for a tax law. The provision must contain an expiration clause that contains a date that occurs after the later of the end of the affected period or the first day of the year following the year that a final return related to the period must be filed.

EXAMPLE (returns usually filed in June 2008 for April 2008 reporting period but annual filers would file in January 2009):

SECTION 106. [EFFECTIVE UPON PASSAGE]: (a) For purposes of:

(1) IC 6-2.5-7-3; and

(2) IC 6-2.5-7-5;

as amended by this act, all transactions, except the furnishing of public utility, telephone or related services, cable television or similar video and related services, cable radio, satellite television, or satellite radio services and related commodities by retail merchants described in IC 6-2.5-4-5, IC 6-2.5-4-6, and IC 6-2.5-4-11, shall be considered as having occurred after March 31, 2008, to the extent that delivery of the property or services constituting selling at retail is made after that date to the purchaser or to the place of delivery designated by the purchaser. However, a transaction shall be considered as having occurred before April 1, 2008, to the extent that the agreement of the parties to the transaction was entered into before April

1, 2008, and payment for the property or services furnished in the transaction is made before April 1, 2008, notwithstanding the delivery of the property or services after March 31, 2008.

(b) With respect to a transaction constituting the furnishing of public utility, telephone or related services, cable television or similar video and related services, cable radio, satellite television, or satellite radio services and related commodities, only transactions for which the charges are collected upon original statements and billings dated after April 30, 2008, shall be considered as having occurred after March 31, 2008.

(c) This SECTION expires January 1, 2010.

EXAMPLE (individual income tax filers ordinarily file by April 15, 2011 for the 2010 taxable year and fiscal year filers ordinarily file by October 15, 2011 for the 2010-2011 taxable year):

SECTION 2. [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)] (a) IC 6-3-2-3.7, as amended by this act, applies only to taxable years beginning after December 31, 2009.

(b) This SECTION expires January 1, 2012.

EXAMPLE (taxes due and payable in 2009 for a 2008 assessment date):

SECTION 106. [EFFECTIVE UPON PASSAGE] (a) IC 6-1.1-21.1, as added by this act, applies to property taxes imposed for an assessment date after January 15, 2008.

(b) This SECTION expires January 1, 2010.

4. A provision that will be in effect for two years or less, unless the provision should be included in the Indiana Code under PART 1, above. Examples include legislation authorizing interim administrative rules, creating a temporary appropriation, or creating a temporary study committee that expires before January 1 of the year following enactment.

5. A provision that makes a construction appropriation, concerns a bond authorization approval, or is another budget act related SECTION, even if the provision is in effect for more than two years.

Include a statement of expiration in each noncode provision.

EXAMPLE:

(b) This SECTION expires July 1, 2012.